

**ENVIRONMENTAL QUALITY COMMISSION**

EQC Public Meeting  
February 24, 2000  
Room 131 Capitol Annex, Frankfort

The Kentucky Environmental Quality Commission (EQC) held a public meeting on February 24, at 2:00 at the Capitol Annex in Frankfort, Kentucky. Commissioners present were Chair Aloma Dew, Vice-Chair Betsy Bennett, Bob Riddle, Patty Wallace, and Gary Revlett. EQC staff present was Leslie Cole, Scott Richards, Erik Siegel, and Frances Kirchhoff. There were approximately 75 people in attendance.

EQC Chair, Aloma Dew called the meeting to order. A motion was made by Betsy Bennett and seconded by Patty Wallace to approve the minutes for the meeting of August 18 –19, 1999. The motion carried unanimously. A motion was made by Betsy Bennett and seconded by Patty Wallace to approve the minutes for the meeting of December 16, 1999. The motion passed unanimously.

The first agenda item was a legislative update of the 2000 General Assembly. Chair Aloma Dew introduced Bruce Williams, Deputy Secretary of the Cabinet of Natural Resources and Environmental Protection (NREPC). Mr. Williams reviewed several bills including to HB 643, extension of the hazardous waste management fund fee. This is the Cabinet's bill to preserve the state's ability to cleanup abandoned waste sites. He said this bill had passed out of committee and is awaiting action on the floor. Another bill reviewed by Mr. Williams was HB1, the Bottle Bill, includes the Cabinet's proposal for an advanced deposit fee (ADF) on fast food containers. The ADF is expected to generate about \$30 million per year for waste programs. Mr. Williams said that the legislature was also considering other waste fee proposals to address waste management issues. He indicated that the mandatory garbage collection component of HB 1 will likely pass. Mr. Williams also expressed serious concerns about HB 755 and SB290, a brownfields redevelopment measure that relieves responsible parties from cleaning up sites. He also noted that the Cabinet expects a Concentrated Animal Feeding Operation (CAFO) bill will be sponsored by the Farm Bureau to counter the state's recently filed CAFO emergency regulations. Mr. Williams also briefly discussed a takings bill, the Kentucky River Authority bill; and Oil Overcharge bill.

Chair Dew read a draft EQC resolution supporting House Bill 843 and Senate Bill 37 to extend the Hazardous Waste Management Fund fee. Betsy Bennett motioned to approve the resolution with Bob Riddle seconding the motion. The resolution entitled Hazardous Waste Management Fund was passed unanimously by EQC Commissioners and is attached and made a part of these minutes.

Chair Dew next read a draft EQC resolution regarding waste management including:

- EQC support for statewide mandatory garbage collection
- Encourage interested parties to work together to develop a workable solution to support

proper solid waste management, litter abatement, and recycling.

Bob Riddle made a motion to approve the resolution and Gary Revlett seconded the motion. The motion passed unanimously and is attached and made a part of these minutes.

The next agenda item was an update concerning the acquisition of the timber and mineral rights to protect Black Mountain. Mr. Mike Haines, Office of Legal Services, NREPC, gave a brief overview of the status of this effort. He noted that funds are in Governor Patton's budget (\$4.1 million) for the acquisition to complete the purchase. The tentative closing date for the deeds to change hands is August 31, 2000. A question concerning clarification of public access to Black Mountain was asked. Mr. Haines noted that the Cabinet is in negotiations with surface owners concerning "scientific access." Scientific access gives access to Black Mountain for university researchers, cabinet officials, and other state agencies to conduct research and inventories. Mr. Haines noted that an attempt has been made to extend access, however this is still under negotiation. Mr. Haines indicated that although funding is in the proposed budget, if the General Assembly does not approve the budget then the negotiated settlement will lapse. Patty Wallace made the motion that EQC support the Governor's proposed \$4.1 million funding request to protect Black Mountain. Betsy Bennett seconded the motion. The motion passed unanimously.

The next agenda item was a presentation from Dr. Rice Leach, Commissioner of the Department for Public Health (DPH). Chair Dew noted that EQC has invited Dr. Leach to respond to the Commission's recommendations regarding onsite sewage in Kentucky. The Commission spent several months last year developing a set of recommendations to improve onsite sewage programs in Kentucky. Dr. Leach gave an overview of the duties of the Department of Public Health and a list of its many duties and responsibilities among which is onsite sewage.

Dr. Leach indicated that Cabinet for Health Services (CHS) Secretary Jimmy Helton reviewed the EQC Onsite Sewage report and responded to Sec. Bickford in a letter. He said that Secretary Helton was favorable and supportive of the EQC recommendations. Dr. Leach summarized Secretary Helton's comments including:

- that CHS and DPH acknowledge the problems identified by EQC and share the concerns that the report raised, and
- CHS and DPH concur with the need to expand the working relationship with the Natural Resources and Environmental Protection Cabinet and work closely.

Dr. Leach noted that what they didn't see mentioned in the EQC report was the many complaints DPH receives that existing onsite sewage regulations are too strict. Enforcement of the onsite sewage regulations has led some local health departments to pull out of district health departments. Dr. Leach also indicated that DPH believes there is a problem with onsite sewage that needs to be addressed, there are those out there who think the program is done quite well.

Dr. Leach acknowledged that additional resources would be needed to fully address the issues raised in the report. However, he noted that the final enforcement rests in the county judicial systems. He said that DPH frequently cites homeowners for onsite sewage problems and reports these problems to the county attorneys. According to Dr. Leach, the county attorneys are then faced with the choice of taking the issue to court and condemning property and putting violators out on the street, or to continue to let sewage run into the groundwater and surface water. Dr. Leach said there is no hard data on health impacts from failing septic systems and it is hard to track diseases to contaminated water so it receives low priority and little action in the courts.

Dr. Leach also noted the need to fund systems to dispose of human waste at the same time new water systems are funded. He said a water district will get created and will pipe potable water into someone's home resulting in a greater volume of wastewater. DPH is in favor of efforts that promote the expansion of sewage systems and water system together.

Dr. Leach recommended involving all stakeholders in the resolution of the issues that were identified in EQC report. He indicated that the Public Health Department would like to retain the onsite waste program. The reasons being:

1. It has been there for a long, long time, and
2. Onsite sewage systems do in fact cause health problems.

Dr. Leach indicated that an onsite advisory committee was established by DPH, which includes county judges, manufacturers, installers, and environmentalists. He said that DPH would like for that group to be involved in whatever is done as we go forward.

Dr. Leach noted that while DPH has little information about systems installed prior to 1986, it is likely that they are failing. He noted, however, that the key question is how well are the ones working that were installed in the last 12 to 15 years.

Dr. Leach noted that they have found through experience that education will help. Not all homeowners know how to take care of onsite systems. He said that there is information that local governments would benefit from receiving because some of the decisions local governments make impact this problem. Dr. Leach noted that local planning and zoning commissions make development decisions that have an impact on wastewater treatment. He said there is a great need to provide information to developers and builders. He said that homebuyers and manufactured homebuyers ought to be educated as well. To do the job, DPH would need field staff to train local inspectors to help answer questions from homeowners and better assess complaints. Dr. Leach noted that DPH just doesn't have the manpower to respond to every complaint very quickly.

Dr. Leach indicated that DPH needs to evaluate the way installers receive state approval and the way inspectors get certified. He noted that allegations have been made that inspectors are not implementing the program right. Dr. Leach also noted that DPH needs an engineer to help with the design of options

for some of the newer type systems. DPH also needs access to a hydrologist.

Dr. Leach said that DPH has accepted the terms of the strategic plan, as outlined on page 15 of the EQC report, and is moving ahead. CHS and DPH agree that we need to move ahead on these recommendations and develop a unified approach agreed to by NREPC, Cabinet for Health Services, Representative of Local Government, and the Council on Public Health. Dr. Leach said the bottom line is we are ready, willing, and able to work on these issues. But, he said, we need to define who is going to do what, and the resource requirements are so at this time two years from now we can be coming forth collectively to the General Assembly asking for the ability to close the gap.

The presentation was followed by a question/answer period. Mr. Riddle questioned whether DPH was committed to addressing the problem of onsite sewage. He asked how are we going to take care of 50 years of straight pipes and failing septic systems. He noted that it appears the CHS has no interest in enforcing these state laws. He indicated that it makes more sense to put the Onsite Program in NREPC where it will receive higher priority. Dr. Leach responded that regulations are not being enforced in the local courts. He said he could condemn 10,000 homes with faulty systems, but the question comes down to whether I do it or Secretary Bickford does it--is the county court going to condemn property and put violators on the street. Dr. Leach said if "sewage were causing heart attacks, or car wrecks, there would be a human outcry, but that's what's missing." He further stated "Who is going to throw the Leach family out on the street because they have a leaking septic system. Who is going to stop them from drinking bad well water? That's the reality when you don't have city sewers. EQC is focused on bad water, but what is killing us is people sitting around doing no exercise, eating too much fat, and smoking cigarettes."

Mr. Riddle commented that no maintenance of existing onsite systems is required. Mr. Riddle said it would help if there were maintenance required every 3 to 5 years and greater public outreach about inappropriate siting of septic systems. Mr. Klee with DPH concurred that maintenance is not required. Mr. Riddle noted that if this program was located where other water programs were, under one secretary, we would be able to better address these problems and provide the problem with more attention and greater priority.

A question was asked concerning funding. Mr. Leach said the proposed budget allows for additional revenue generation for local health departments. It does not include additional funding or staff for the onsite sewage program.

Dr. Leach said he would be happy to come back before EQC in six months and give the commission a plan on how we are going to move this thing off "dead center." He said NREPC and CHS have a good history of working together on issues.

Chair Dew said that EQC is confident that the two Cabinets can work together on this issue, but we also believe that it is a health issue and if there are laws, those laws should be enforced. Ms. Dew noted that EQC also understands that money is the eternal problem. She went on to commend CHS for its efforts

and urged the Cabinet to move forward with the recommendations that came out of the roundtable discussion facilitated by EQC last fall.

Next, Chair Dew introduced Commissioner Bob Logan with the Department of Environmental Protection (DEP) to discuss Concentrated Animal Feeding Operations (CAFOs). Commissioner Logan stated that on February 14, the NREPC filed the CAFO emergency regulation and a Notice of Intent to file permanent regulations. The Cabinet will hold a series of public meetings toward the end of March. Commissioner Logan then introduced Bruce Scott, Branch Manager of the Kentucky Pollution Discharge Elimination Systems (KPDES) program. Mr. Scott gave an overview of the Kentucky AFO/CAFO Strategy. The primary goal of this strategy is to protect and improve water quality. The strategy includes four parts:

1. The use of existing state NPDES general permit program to address small (generally less than 1,000 animal units) Animal Feeding Operations (AFOs).
2. The use of existing Agriculture Water Quality Authority to address AFOs and CAFOs regardless of size, to implement Best Management Practices.
3. The use of existing federally delegated NPDES permitting program to address large (generally greater than 1,000 animal units) AFOs and CAFOs.
4. The development and implementation of new regulations to address certain key issues such as integrator liability and siting with respect to CAFOs.

Mr. Scott passed out an outline of the strategy, which is attached and made a part of these minutes. Mr. Scott said there were about 2,500 AFO operations in Kentucky of which about 250 would be the size to be considered a CAFO.

The presentation was followed by a question/answer period.

- Betsy Bennett asked for further clarification regarding the general and individual permits for CAFOs. Mr. Scott said the four general permits pertaining to CAFOs have been public noticed.
- Ms. Bennett asked if 250 CAFOs would be required to get individual KPDES permits? Mr. Scott responded that it would be a combination of general and individual permits.
- Ms. Bennett if there was any special logic in choosing the 1,500 animal units rather than 1,000 other than keeping the numbers down? Mr. Scott said the number was based on potential impacts to waterways.
- Ms. Bennett asked if the poultry CAFOs would need a permit since that litter is dry and not wet? Mr. Scott said that had yet to be fully decided.
- Ms. Dew asked if there was anything being done about existing facilities? Mr. Scott responded that those are being addressed on a case by case basis as complaints or problems arise.
- Ms. Cole asked if the general KPDES CAFO permits would apply to existing operations? Mr. Scott responded they would for those that are a certain size.

- Ms. Bennett asked about the siting setbacks. Mr. Scott responded that the setbacks for the beef, dairy, and swine are the same. For the poultry, they are similar to those setback requirements in BMP 17 of the Agriculture Water Quality Plan.
- Ms. Cole asked if the integrator liability rules would apply to existing operations? Mr. Scott responded they would.
- Ms. Cole asked if the siting criteria would apply to existing operations if they were expanding. Mr. Scott responded yes, they would be effected.

Chairperson Aloma Dew turned the meeting over to Vice-Chair Betsy Bennett citing a possible conflict of interest. Ms. Bennett read a draft letter addressed to Governor Patton supporting the CAFO emergency regulations and CAFO general and individual KPDES permits. In addition, the commission called for:

- a state coordinated action plan and team to respond to problems on existing operations,
- additional resources to implement the CAFO program,
- a strong technical assistance and CAFO enforcement program,
- support for the set aside of \$9 million in tobacco settlement money to fund environmental technologies for farmers, and
- to explore the role of agribusiness in providing technical and financial assistance to farmers to promote sound environmental practices.

Discussion of the recommendations followed. Gary Revlett made a motion to approve the CAFO recommendations and that the letter be sent to Governor Patton. Bob Riddle and Patty Wallace seconded the motion. Motion carried with Aloma Dew abstaining from the vote.

The Commission took a brief break and then reconvened to discuss other business. Under other business, the commission discussed NREPC's response to EQC's recommendation that the state require additional testing for toxics and other compounds that may be potentially emitted by burning tire derived fuel (TDF) at the Owensboro Municipal Utilities (OMU) power plant. The Cabinet had indicated that the OMU plant would operate safely based on research generated by the U.S. EPA and other states with TDF facilities and that no additional testing was needed. After discussion, a motion was made by Gary Revlett that staff draft a letter to Secretary James E. Bickford asking that a one-time testing be done to check for polycyclic aromatic hydrocarbons and dioxins. The motion was seconded by Betsy Bennett and passed unanimously.

Ms. Dew next reported on EQC meetings with various legislators on January 26. Executive Director, Leslie Cole; Chair, Aloma Dew; and Vice-Chair, Betsy Bennett met with Senator David Boswell, Senator David Williams, Rep. Jody Richards, Rep. Greg Stumbo, Rep. Rocky Adkins, and Rep. Harry Moberly. Discussed in these brief meetings were the EQC budget, EQC onsite sewage recommendations, EQC appointments, and other matters of concern. Ms. Cole, Chair Dew, and Vice-Chair Bennett also met with Secretary Bickford to discuss the legislative meetings and other matters. All of the meetings were positive and encouraging, according to Chair Dew.

Ms. Cole next reported that EQC received a request by Chris Schimmoeller, Kentucky Heartwood, asking EQC to consider sponsoring a public forum on the proposed Interstate 66 Project. After discussion, a motion was made to have EQC staff draft a letter to the Kentucky Department of Transportation and the U.S. Highway Administration urging them to strengthen public input into the I-66 planning and decision-making process. The motion was made by Betsy Bennett and seconded by Bob Riddle. The motion passed unanimously.

The EQC Earth Day Award ceremony was next discussed. Ms. Cole said EQC has invited Wendall Berry to be the keynote speaker. Tentative plans are to have a time capsule or a tree planting as a part of the ceremony.

Ms. Cole next called attention to a summary of the EQC budget. The budget shows that 55 percent of the budget is spent and 58 percent of the fiscal year has lapsed. A copy of the requested EQC budget and final budget under consideration by the legislature was reviewed. The EQC operating budget for fiscal year 2002 will be that of its 1996 operating budget. EQC will need to look for grants and other sources of funding to help supplement its budget, according to Ms. Cole.

The last item under other business was a review of the 2000 EQC meeting schedule. The date of the next meeting will be March 22 for a wrap-up of the legislative session and focus on environmental education.

With no further business the meeting adjourned at 4:30 pm.

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sign

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date